

In Re Carren Stratford

§ IN THE DISTRICT COURT
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§ TARRANT COUNTY, TEXAS
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§ 17th JUDICIAL DISTRICT

**PLAINTIFF'S FIRST AMENDED PETITION FOR DAMAGES, JURY DEMAND,
AND REQUEST FOR DISCLOSURES**

COMES NOW, Plaintiff CARREN STRATFORD, by her Next Friend Jackson Nyamwaya, making and filing this First Amended Petition for Damages, Jury Demand, and Request for Disclosures against Defendants THYSSENKRUPP ELEVATOR CORPORATION, and RANDAL J. MASON. In support thereof, Plaintiff states the following:

A. DISCOVERY CONTROL PLAN

1. Plaintiff intends to pursue discovery in the above-styled and numbered cause under a Level 3 Discovery Control Order, pursuant to Texas Rules of Civil Procedure 190.1 and 190.4.

B. PARTIES

2. Plaintiff CARREN STRATFORD, is an individual residing in Tarrant County, Texas. Her adult son Jackson Nyamwaya is qualified to bring this action on her behalf as Next Friend pursuant to Rule 44, TEXAS RULES OF CIVIL PROCEDURE. Carren Stratford has been diagnosed with a traumatic brain injury as a result of the event in question, and currently remains a patient in a brain injury rehabilitation facility. Pursuant to Section 30.014 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, Plaintiff provides the last three numbers of her driver's license

(646), and the last three numbers of her social security number (183). Pursuant to Section 30.015, her address is 38740 Foxhound Lane, Fort Worth, Tarrant County, Texas 76021.

3. Defendant THYSSENKRUPP ELEVATOR CORPORATION is a Delaware company doing business under the laws of the State of Texas and maintaining an agent for service in this State, Prentice Hall Corporation System, 211 E 7th Street, Suite 620, Austin, Travis County, Texas 78701-3218. THYSSENKRUPP has previously appeared in this proceeding through legal counsel as indicated in the certificate of service.

4. Defendant RANDAL J. MASON is an individual whom THYSSENKRUPP has designated as its agent to be responsible for the maintenance and safety of the equipment at issue in this litigation. Mr. Mason is a resident of the State of Texas may be served with process at his residence address of 817 Basket Willow Terrace, Haslet, Tarrant County, Texas 76052.

C. JURISDICTION AND VENUE

5. Venue is proper in Tarrant County, Texas pursuant to Section 15.002(a)(1) of the TEXAS CIVIL PRACTICE & REMEDIES CODE because it is the County where the cause of action arose.

6. This Court has jurisdiction over this matter because Plaintiffs' damages exceed the minimum jurisdictional limits of the Court; the acts or events occurred in Texas; Defendant Mason is a citizen of Texas; and Defendant Thyssenkrupp was doing business, which forms the basis of Plaintiff's complaints, in the State of Texas.

7. Plaintiff requests that the jury award damages in amounts that it believes to be fair and reasonable. However, because it is expressly required by Rule 47, TEXAS RULES OF CIVIL PROCEDURE, Plaintiff affirmatively pleads that she is seeking monetary relief in an amount (i) within the jurisdictional limits of the court; and (2) that is more than \$1,000,000.

D. FACTUAL SUMMARY

8. Plaintiff's claims arise out of an elevator malfunction that occurred on January 20, 2019 at John Peter Smith Hospital in Tarrant County, Texas.

9. Beginning in 2014, and again in 2017, the Tarrant County Hospital District d/b/a JPS Health Network contracted with THYSSENKRUPP ELEVATOR CORPORATION to service and maintain the elevator equipment at JPS Hospital. By such agreement, Defendant THYSSENKRUPP assumed legal duties to the public to maintain the elevators in a safe and working condition including providing a "complete" and "preventive continuing system of programmed preventive maintenance" for JPS elevators. THYSSENKRUPP promised to provide "maintenance of the highest quality" and to "regularly and systematically test, examine, adjust, lubricate, and if conditions warrant, clean, repair, or replace components." (2017 Contract, Section 2.51; Preventive Maintenance Service, Section 1.02). THYSSENKRUPP agreed that "[i]t is the responsibility of [Thyssenkrupp] to maintain all equipment in safe operating condition as required by law or regulation." (Section 2.5.3). The itemization of equipment covered by the agreement specifically included the "brake pulley, brake coil, brake contact, linings and component parts." (Section 3.0(a)). Section 3.4.1(b) required THYSSENKRUPP to monthly inspect the brake operation and adjust as required for proper operation. Such agreement and obligations were in effect on the date of the event in question. For the approximate one-year period prior to the event in question, Defendant RANDAL MASON was the employee or agent of THYSSENKRUPP assigned by it to be primarily responsible for the safety, maintenance and repair of the elevators at JPS Hospital. THYSSENKRUPP and MASON knew, or should have known, that members of the public and staff at JPS, such as Carren Stratford, would rely on the performance of these obligations by THYSSENKRUPP and MASON.

10. CARREN STRATFORD, age 56, was working as a nurse at John Peter Smith Hospital. On the morning of January 20, 2019, Nurse Stratford was on the 10th Floor of the hospital and pushed the call button for an elevator to go up. Elevator #29 arrived at the 10th floor and its doors opened for her to enter. As Nurse Stratford crossed the threshold entering the elevator car, it began to move upward causing her to lose her balance and fall. Her body was positioned by the fall so that from the waist down she was inside the elevator car, and the top half of her body was outside the car. The car continued upward with its doors open and with her body face down across the threshold at the waist. As the car rose, she was folded downward at the waist by the upper frame of the door as the floor of the elevator car met the top of the doorway opening. The elevator car continued to rise until her body was wedged in the 4-inch space between the elevator car and the wall of the elevator shaft. Because of the force of the upward moving car, Nurse Stratford sustained serious physical injuries to her body. It took rescue personnel approximately 10 minutes to free her. During that time, Nurse Stratford was crushed, unable to breathe, and her circulation was compromised, depriving her brain of oxygen and causing her to sustain an anoxic brain injury. When she was freed from her position of entrapment, she was pulseless, and CPR was begun. She arrived in the emergency room with a GCS score of 3/15 and was intubated. It was not until after approximately 10-15 minutes of CPR, that restoration of spontaneous circulation was finally achieved. As a result of the event, Nurse Stratford has suffered serious and permanently disabling injuries for which she will require medical care for the foreseeable future. As of the date of this petition, over 6 months after the event in question, Nurse Stratford remains a patient in a brain injury rehabilitation facility.

11. Pursuant to the authority and obligations imposed on it by law, the Texas Department of Licensing and Regulation (TDLR) conducted an investigation into the causes of the

event in question. The department utilized experts in elevator operation and maintenance to examine and test the component equipment of elevator #29. The TDLR made factual findings in its report that the malfunction of the elevator was due to a brake failure where the brake coil actuating pin was in a "frozen" state due to lack of lubrication; the left hand brake shoe was "worn down and into the rivets" and the "right hand shoe was also worn down and past the point of needing replacement." The report found: "From observations on site and during the brake assembly testing, all factors indicate the brake shoes did not set when the elevator came to rest at the tenth floor. The brakes' failure to set was due primarily to the brake shoes not setting firmly on the brake pulley and the actuating pin bottoming out against the brake core." The report also found: "The worn brake shoes and frozen pins illustrated a lack of routine maintenance and equipment checks. There were no visible signs of lubrication on the brake sleeve and core. Equipment of this type requires more frequent maintenance intervals and diligence in scrutinizing electro-mechanical integrity." The TDLR then filed an administrative complaint against THYSSENKRUPP for the deficiencies in the maintenance of the equipment.

E. NEGLIGENCE

12. Plaintiff incorporates all prior and subsequent paragraphs as if fully restated and re-alleged herein.

13. On the occasion in question, Defendants THYSSENKRUPP and its employees or agents, including MASON, violated their duties to exercise reasonable care in the performance of its services of providing "regular and systematic testing, examination, adjustment, lubrication, cleaning, repair and replacement of worn components" for elevator #29 at JPS Hospital. Such negligence includes, a failure to lubricate the brake sleeve and core on elevator 29 which caused or contributed to the brake pin becoming "frozen"; and a failure to inspect, notice and replace the

brake shoes timely before excessive wear prevented safe operation of the elevator car. These failures created a foreseeable risk of an unreasonably dangerous condition that the public, including Nurse Stratford, was exposed to, and which proximately caused the event in question.

14. MASON is the employee or agent of THYSSENKRUPP, and it is therefore responsible for his actions or omissions under the doctrine of *respondeat superior*.

15. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, which proximately caused the above-referenced occurrence and Nurse Carren Stratford's injuries and damages.

F. DAMAGES, COSTS, AND INTEREST

16. Plaintiff incorporates all prior and subsequent paragraphs as if fully restated and re-alleged herein.

17. As a direct proximate result of the negligent acts described above and/or omissions on the part of Defendants, Nurse Stratford has suffered bodily injuries and damages as generally described herein and in more completely described in her medical records. Accordingly, Plaintiff seeks the following damages:

1. Medical Expenses: Nurse Stratford has incurred medical expenses in the past. These expenses were incurred for reasonable and necessary care and treatment of her injuries. The charges incurred are reasonable and were the usual and customary charges for the same or similar services at the time and place rendered. Nurse Stratford also expects to incur reasonable and necessary medical expenses in the future in an amount within the jurisdictional limits of this Court;
2. Physical Impairment, Disfigurement and Loss of Earnings: Nurse Stratford has suffered physical and mental impairment in the past and will continue to suffer physical and mental impairment in the future. She has also been physically disfigured by her injuries. Further, as a result of such physical impairment, she has sustained a loss of earnings in the past and a loss of earning capacity in the future;
3. Physical Pain and Suffering: Nurse Stratford has endured physical pain and suffering in the past and will continue to endure severe physical pain and suffering in the future;

Mental Anguish: Nurse Stratford has endured severe mental anguish in the past and will continue to endure severe mental anguish in the future;

By reason of the above and foregoing, Carren Stratford has been damaged in a sum within the jurisdictional limits of this Court, for which Plaintiff hereby sues.

18. Plaintiff also seeks recovery for all costs of court and prejudgment and post-judgment interest at the maximum rates allowed by law.

JURY DEMAND

19. Plaintiff hereby demands a jury trial. Accordingly, Plaintiff tenders the proper jury fee with this filing.

REQUEST FOR DISCLOSURES

20. Within fifty (50) days after service hereof, Plaintiff requests that Defendants disclose the information and materials described in Texas Rule of Civil Procedure 194.2.

PRAYER

WHEREFORE, Plaintiff requests that this Court enter judgment against Defendants and award Plaintiff the following relief:

- (i) A sum of money—as determined by a jury to be fair and reasonable—within the jurisdictional limits of this Court for the damages indicated above;
- (ii) Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- (iii) Costs of suit; and
- (iv) Such other and further relief to which Plaintiff may be justly entitled.

RESPECTFULLY SUBMITTED:

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This will certify that on August 6, 2019 a true and correct copy of this First Amended Petition was served on the following pursuant to Rule 21a, Texas Rules of Civil Procedure

Alan L. Rucker
Mayer LLP
750 N St. Paul Street, Suite 700
Dallas, TX 75201

Via Email: arucker@mayerllp.com

/s/ Kern A. Lewis